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April 16, 2024

**VIA ECF**

Hon. Leo M. Gordon  
United States District Court  
District of New Jersey  
2 Federal Square  
Newark, NJ 07102

**Re: State of New Jersey v. United States Dep't of Transp., et al., 2:23-cv-3885**

Dear Judge Gordon,

Enclosed please find New Jersey's corrections to the transcripts from the oral argument on April 3 and 4, 2024 (Exhibit A and B, respectively). Federal Defendants have one objection to New Jersey's correction on page 181, which is explained further in Exhibit A.

Respectfully,

/s/ Randy M. Mastro  
Randy M. Mastro

cc: All counsel of record (via ECF)

# **EXHIBIT A**

**State of New Jersey v. United States Dep’t of Transportation et al.** Case No. 2:23-cv-03885**New Jersey’s Errata Sheet from April 3, 2024 Summary Judgment Oral Argument<sup>1</sup>**

<b>Page:Line</b>	<b>Change From</b>	<b>Change To</b>	<b>Reason</b>
7:13–14	NEPA. Of	NEPA of	Transcription error
8:16	Authority	Administration	Transcription error
10:24	words of	in the words of	Transcription error
11:1	Delete “this FHWA. Found”		Clarification
11:21	Delete “yea”		Transcription error
11:24	Ninth	The Ninth	Transcription error
11:25	the Environmental Defense Center case	<i>Environmental Defense Center v. Bureau of Ocean Energy Mgmt.</i> , 36 F.4th 850 (9th Cir. 2022)	Clarification
13:15	Supreme Court	Third Circuit	Clarification
13:16	the Bordentown case	<i>Town of Bordentown, N.J. v. Federal Energy Regulatory Commission</i> , 903 F.3d 234 (3d Cir. 2018)	Clarification
13:18	Supreme Court	Third Circuit	Clarification
13:22	and	end quote, and	Clarification
15:3	Delete first “that”		Transcription error

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<sup>1</sup> Defendants have one objection to Plaintiff’s correction to page 181. *See infra* n.2. Intervenor-Defendants have no objections to this errata sheet.

Page:Line	Change From	Change To	Reason
16:19	agreement	argument	Transcription error
18:4	FAA	FHWA	Clarification
18:6	and	end quote, and	Transcription error
18:23	Delete “to”		Transcription error
19:11	you	the MTA	Clarification
19:13	your	the	Transcription error
19:20	yet. That's	yet, and that's	Transcription error
19:25	final.	final FONSI.	Clarification
21:15	the Dubois case	<i>Dubois v. U.S. Department of Agriculture</i> , 102 F.3d 1273 (1st Cir. 1996)	Clarification
22:2	Richardson case	<i>N.M. ex rel. Richardson v. Bureau of Land Management</i> , 565 F.3d 683 (10th Cir. 2009)	Clarification
22:5	supplemental analysis of impacts.	supplement analyzing the impacts, end quote, when, quote,	Clarification
22:7	Effects of what was analyzed	Effects to the effects of restrictions analyzed	Clarification
22:8	DC Circuit	D.C. District Court	Clarification
25:1	the Nio case	<i>Nio v. U.S. Department of Homeland Security</i> , 385 F. Supp. 3d 44 (D.D.C. 2019),	Clarification

<b>Page:Line</b>	<b>Change From</b>	<b>Change To</b>	<b>Reason</b>
25:2	a challenge	the challenged	Transcription error
25:4	at	on	Transcription error
25:24	is	is, quote	Clarification
26:10	EIA, in	EA and	Transcription error
30:2	did	took	Transcription error
66:21	tolling	tolling hours	Transcription error
67:1	Delete "What did you hear?"		Clarification
68:1	FONSI	a FONSI	Transcription error
70:15	a	of	Transcription error
70:18	Carter	corridor	Transcription error
70:20	Salmon tolling	Salmon, changing tolling	Transcription error
70:21	connector	connector and	Transcription error
71:19	23CFR771.129	23 C.F.R. § 771.129	Transcription error
72:19	litigation	mitigation	Transcription error
72:22	problem s	Problems	Transcription error
72:23	Delete "I --"		Transcription error
85:24	1501.	1501.6.	Clarification

Page:Line	Change From	Change To	Reason
86:7	mitigator	mitigated	Transcription error
86:16	largess	leftovers	Transcription error
89:14	dollar.	dollar to New Jersey.	Clarification
89:17	that	that mitigation	Clarification
89:22	unenforceable	enforceable	Transcription error
91:1	reason	reasoned	Transcription error
91:22	Monmouth County	<i>Monroe County Board of Commissioners v. U.S. Forest Services</i> , 595 F. Supp. 3d 713 (S.D. Ind. 2022)	Clarification
92:15	in -- in the FHWA EA.	in the final EA	Transcription error
93:1	Clarity's	For clarity's sake	Transcription error
93:25	Delete "that"		Transcription error
94:21	to -- convincing	to provide a convincing	Transcription error/ Clarification
95:22	What -- what	That	Transcription error
95:25	that you	to	Transcription error
96:6	spelled	spells	Transcription error
96:7–8	the Indigenous Peoples Case of Coastal Bend in the Southern District of Texas	<i>Indigenous Peoples of Coastal Bend v. United States Army Corps of Engineers</i> , 2023 WL	Clarification

Page:Line	Change From	Change To	Reason
		6226387 (S.D. Tex. July 27, 2023)	
96:10	actions	action	Transcription error
96:11	. What -- what	that	Transcription error
96:11	As	Has	Transcription error
96:12–13	Delete “, I can”		Transcription error
97:1-6	thought	that	Transcription error
97:3	respects	impacts	Transcription error
97:5	if	because	Clarification
97:10	they	so they	Transcription error
97:14	Delete “is --”		Transcription error
100:1-2	The -- and we raised, we definitely raised that you -- you know, you went	And we raised, we definitely raised that FHWA	Transcription error/ Clarification
101:14	the state -- there is	these commitments have	Transcription error/ Clarification
101:19	measure	require	Transcription error
103:12	Got	There’s got	Transcription error
103:17	Delete “in”		Transcription error
103:18	Delete “And there is --”		Clarification

Page:Line	Change From	Change To	Reason
104:1	Delete “, yet”		Transcription error
104:15	EIS	EA	Clarification
104:15	recognition	mitigation	Transcription error
104:16	not provided	did not provide it	Clarification
109:8	average	annual average	Clarification
109:22	Committees	Communities	Transcription error
109:23	Committees	Communities	Transcription error
109:24	place	place-based	Transcription error
111:19-20	tracts 90th percentile	tracts that met the 90th percentile for chronic disease burdens or pollutant burdens	Clarification
111:23	seem	that seem	Transcription error
114:15	Delete “Essex County, you know”		Transcription error
114:19	found	FHWA found	Transcription error
114:19	place this	place-based	Transcription error
114:24	qualified	qualified for mitigation	Clarification
114:25	FHWA	FHWA for potential mitigation	Clarification
115:1	It warned of EPA's letter. There	EPA warned in its letter there	Clarification



Page:Line	Change From	Change To	Reason
115:2	commitment	mitigation	Transcription error
115:2	timelines	timelines,	Transcription error
117:23	is	does	Transcription error
118:3	differed	deferred	Transcription error
118:4	Delete "--"		Transcription error
118:4	, that's including cordoned-area"	includes cordon and area	Transcription error
118:6	roadway	roadways	Transcription error
118:7	told	tolled	Transcription error
119:4	Yeah,	It	Transcription error
119:15	Delete "--"		Transcription error
120:14	reason	reasoned	Transcription error
120:18	And	FHWA	Clarification
121:4	Reason	Reasoned	Transcription error
121:17	DOT_000449	DOT_0044940	Transcription error
121:20	and	on	Transcription error
122:18	Delete first "is"		Transcription error
123:8	we	they	Transcription error

Page:Line	Change From	Change To	Reason
124:5	Delete "-- there is no"		Transcription error
124:11	needed	mitigation needed	Clarification
125:15	Delete "under TBTA,"		Transcription error
127:16-17	<i>Simmons v. Army Corps of Engineers</i> Seventh Circuit 120 F.3d 664th.	<i>Simmons v. U.S. Army Corps of Engineers</i> , 120 F.3d 664 (7th Cir. 1997)	Clarification
176:17	DOT_0003391.	DOT_0000391.	Transcription error
178:11	principle	principled	Transcription error
181:15 <sup>2</sup>	the O'Reilly case	<i>O'Reilly v. All State Financial Company</i> , 2023 WL 6635070 (5th Cir. Oct. 12, 2023)	Clarification
182:6	it. By	it -- by	Transcription error
182:7	agencies. And	agencies -- and	Transcription error
203:22	travel ed	traveled	Transcription error
204:15	Delete "that"		Transcription error
209:18	particular matter, 2.5.	particulate matter 2.5,	Transcription error
210:17	Delete "has --"		Transcription error

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<sup>2</sup> Defendant FHWA objects to this change to the transcript on the basis that it purports to insert what the speaker should have said and is a *post hoc* correction. Plaintiff disagrees and believes this correction is appropriate clarification to respond to the Court's question in the transcript: "Where is the support for that? Is it in some case law precedent?" Tr. at 180:23-24. Since there were two *O'Reilly* cases from the Fifth Circuit repeatedly referred to in Plaintiff's presentation, this correction clarifies for the Court which of the two cases Plaintiff was referring to in response to the Court's question.

Page:Line	Change From	Change To	Reason
210:18	not	no	Transcription error
210:18	these --	they	Transcription error
215:6	Delete "for --"		Transcription error
215:10	Delete "on the --"		Transcription error
219:23	Delete "what --"		Transcription error
219:24	that	than	Transcription error
220:25	subject	suggest	Transcription error
222:11	Delete "rational --"		Transcription error
224:25	who	where	Transcription error
225:23	will	which will	Transcription error
227:11	both pollutants and chronic disease	pollutants or chronic disease	Transcription error
228:21	and	or	Transcription error
229:14	equal	environmental	Transcription error
229:15-19	80 percentile for chronic disease, 66.6 for pollution, 66.6 for chronic diseases.	80th percentile for pollution, 66.66th percentile for chronic diseases.	Transcription error/ Clarification
231:19	census block	census block group	Transcription error

I, Randy M. Mastro, having read the foregoing hearing transcript, held April 3, 2024, do hereby certify said testimony is a true and accurate transcript, with the changes identified above.

/s/ Randy M. Mastro

Randy M. Mastro

# **EXHIBIT B**

**State of New Jersey v. United States Dep't of Transportation et al.** Case No. 2:23-cv-03885**New Jersey's Errata Sheet from April 4, 2024 Summary Judgment Oral Argument<sup>1</sup>**

<b>Page:Line</b>	<b>Change From</b>	<b>Change To</b>	<b>Reason</b>
20:5	2024.	2045.	Transcription error/ Clarification
21:4	Rational	Rationale	Transcription error
22:3	Delete “was the”		Transcription error
22:3	Were	Was	Transcription error
22:13	Delete “It wasn't -- that's a --”		Transcription error/ Clarification
22:18	Delete “2020—”		Transcription error
23:6	Ow	Now	Transcription error
23:8	That the	That's	Transcription error
23:8	DOT_7319	DOT_0007319	Clarification
23:12	Disease	Disease burdens	Transcription error/ Clarification
23:16	Delete duplicate “now” and “the”		Transcription error
23:18-19	To and	With the	Transcription error
26:6-7	90 percent	90th percentile	Transcription error
30:2-3	Mitigative – mitigative	Mitigated	Transcription error
30:7	255	225	Transcription error

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<sup>1</sup> The Defendants and Intervenor-Defendants have no objections to the changes proposed in this errata sheet.

Page:Line	Change From	Change To	Reason
80:24	Fail	Failed	Transcription error
86:15	Delete “New – ”		Transcription error
86:20	I	I’m	Transcription error
87:20	York	Jersey	Transcription error
88:1-2	“Rates on DATRA”	Reasons	Transcription error/ Clarification
88:8	Delete “it”		Transcription error
90:2	Delete “study”		Transcription error
92:20	agency.	agencies.	Transcription error
100:18	1500.7(a).	40 CFR 1506.6(a)	Clarification
102:5-7	Delete “that it is -- distinction Ninth Circuit case. So it says,”		Transcription error/ Clarification
102:8	Bering Strait	<i>Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers</i> , 524 F.3d 938 (9th Cir. 2008)	Clarification
102:9	Totality	the totality	Clarification
102:10	Critical	Crucial	Transcription error/ Clarification
103:15-16	Delete “-- I think I record it earlier”		Clarification

Page:Line	Change From	Change To	Reason
107:5-7	Delete “I don't think we need that.”		Clarification
109:7	20	12	Transcription error
110:4	NYMTC	EJTAG	Transcription error
162:22	DOT_36142.	DOT_0036142.	Clarification
164:22	40CFR --	40 CFR Parts 1500 to 1508 --	Clarification
165:2	and	of, and identify any	Transcription error/ Clarification
165:6	13 – 139	139(l)	Transcription error
165:7	Any	To any	Transcription error
167:7	at --	at DOT_0045366.	Clarification
167:22	adoptive	adaptive	Transcription error
168:22	37042	DOT_0037042	Clarification
170:16	a conversation in	the	Clarification
171:4	Delete “our – my”		Transcription error
172:14	full sum	fulsome	Transcription error
172:15	Delete “?”		Transcription error
183:7-11	Delete “needs a state -- needs – ”		Transcription error
212:5	is	Has the	Transcription error



Page:Line	Change From	Change To	Reason
212:8	<i>Coal</i>	<i>Coalition</i>	Clarification
218:11	Or	For	Transcription error
218:15	Of	On	Transcription error
221:23	Delete “make –”		Transcription error
221:25	Delete “A. The –”		Transcription error
222:1	Review in	Reviewing	Transcription error
222:5	Abusive	In abuse of	Transcription error
222:7	environmental defense center	<i>Environmental Defense Center</i>	Transcription error/ Clarification
222:8-9	<i>Humane Society v. Johanns</i> in the D.C. District Court	<i>Humane Society of U.S. v. Johanns</i> , 520 F.Supp.2d 8 (D.D.C. 2007)	Clarification
222:11	Delete “the presumptive –”		Transcription error
222:12	Promulgated	Promulgating	Transcription error
222:14	the <i>Standing Rock Sioux</i> case from the D.C. circuit	<i>Standing Rock Sioux Tribe v. Army Corps of Engineers</i> , 985 F.3d 1032 (D.C. Cir. 2021)	Clarification
223:1-5	Delete “the –”		Transcription error
223:2	Invalid	Inadequate	Transcription error
223:3	Delete “a, you know”		Transcription error
223:12	They	There	Transcription error

Page:Line	Change From	Change To	Reason
223:12	Delete second “are”		Transcription error
223:23	With out	Without	Transcription error
223:24	Delete “FH –”		Transcription error
225:1	Delete “are so ---”		Transcription error
227:22-23	<i>Los Padres Forestwatch v. US Forest</i> 25 F. 4th 649659	<i>Los Padres Forestwatch v. U.S. Forest Service</i> , 25 F.4th 649 (9th Cir. 2022)	Clarification
228:2	They	There	Transcription error
229:18	<i>Environmental Centers</i>	<i>Environmental Defense Center</i>	Transcription error
230:7	Delete “get –”		Transcription error
230:7	Vacature	Vacatur	Transcription error
230:9	Should	To	Transcription error
248:24	Environmental defense	<i>Environmental Defense Center</i>	Transcription error
250:7-8	They -- when there may be them	There may be significant impacts	Transcription error/ Clarification
250:20	out	up	Transcription error
250:21	-- and	Said	
251:22	“To – this”	This is what	Transcription error/ Clarification
251:22	Telling	Is telling	Transcription error

Page:Line	Change From	Change To	Reason
260:11	Delete “be -- to be – to”		Clarification
260:23	Thought	What	Transcription error

I, Randy M. Mastro, having read the foregoing hearing transcript, held April 4, 2024, do hereby certify said testimony is a true and accurate transcript, with the changes identified above.

/s/ Randy M. Mastro

Randy M. Mastro